

DOCKET NO. 3:08-CV-109-FDW

Defendant.

ORDER

(2) Defendant's motion for summary judgment is GRANTED as to Counts 1 and 3 of

Plaintiff's Third Amended Complaint;

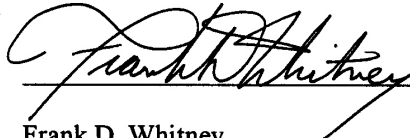
(3) Defendant's motion for summary judgment is DENIED as to Count 2 of Plaintiff's Third Amended Complaint;

(4) Defendant's motion to strike the expert report of Mr. Ferner is HELD IN ABEYANCE pending a *Daubert* hearing to be held at 9:00 a.m. on 16 June 2009. Supplemental briefing may be filed by Defendant by 1 June 2009 and by Plaintiffs by 15 June 2009.

(5) Trial in this matter is hereby CONTINUED from the 13 July 2009 trial term, to be reset at a date and time to be determined.

IT IS SO ORDERED.

Signed: May 18, 2009


Frank D. Whitney
United States District Judge

